IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 449 OF 2005

MR. CHANDRAKANT GOPAL GOVEKAR AND ANR., ...Petitioners

Versus

MR. SAVLO BHAGWAN GOVEKAR(SIN.DEC.) THROUGH L.RS., ...Respondents

Shri S.D. Lotlikar, Senior Advocate with Ms. K. Sambari, Advocate for the Petitioners. ,

Coram:- D. D. SINHA, J.

Date:- 28th November, 2005

P.C.:

Heard Mr. S.D. Lotlikar, learned Senior Counsel for the petitioners.

2. Writ Petition is directed against the Order dated 11th October, 2005 whereby Exhs.33 and 37 moved by the various defendants came to be disposed of. Shri Lotlikar, the learned counsel for the original defendants No.6 and 7 has contended that in the instant case preliminary decree is passed and Commissioner is appointed for partitioning the property. Though defendants No.6 and 7 have given no objection for partitioning the property into four equal parts, however defenants No.6 and 7 have a house in one of the plots constructed by their father and therefore instead of ordering the allotment of plots by way of lottery, the Court ought to have allotted the plot in which the house of the defendants No.6 and 7 stand to the share of defendants No.6 and 7. The learned Senior Counsel therefore contended that the order impugned is bad in law. It is also submitted that there is an averment in this regard in para 2 of the reply of defendants No.6 and 7 to the report of the Commissioner. It is further contended that Respondents No.1 to 4 also do not dispute this aspect.

3. I have considered the contentions canvassed by the learned Senior Counsel and perused the impugned order. Perusal of the impugned order demonstrates that defendants No.6 and 7 have not stated in the pleading that the house/structure in question was constructed by the father of defendants No.6 and 7, except for raising objection in this regard in the reply filed by them to the report of the Commissioner. In the absence thereof, the Court considered the applications made by the other respondents and passed the impugned order in respect of allotment of the said plots amongst the parties by drawing lots. It is also observed in the order that since the house of the defendants is existing in one of the plots, same may be valued and the value of the teakwood trees as well as structures existing in the said plots can be distributed among the parties and therefore the Forest Officer is appointed as a valuer to value the teakwood trees and the existing structures as described by the Commissioner in his report at Exh.22 and the value of the teakwood trees and the existing structures in the said plot be distributed amongst all the parties in four equal shares mentioned in the preliminary decree. The order impugned in my view is just and proper and needs no interference at the hands of this Court.

The Writ Petition is dismissed.

D. D. SINHA, J.

sl.